

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the City of Oak Creek, Milwaukee County, for the Alteration of the Public Crossing of the Union Pacific Railroad Company Tracks with Elm Road in the City of Oak Creek, Milwaukee County

9040-RX-1209

FINAL DECISION

By letter dated April 29, 2005, the City of Oak Creek filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the alteration of the public crossing of the Union Pacific Railroad Company tracks with Elm Road in the City of Oak Creek, Milwaukee County (crossing no. 176-736 C). The alteration requested by the City is the closure of the crossing to motor vehicle traffic with the establishment of a recreational use crossing in its place specifically for pedestrian and bicycle use.

Pursuant to due notice, public hearing was held in this matter on August 25, 2005 in Oak Creek, Wisconsin with hearing examiner David Meier presiding.

Appearances:

**Parties**

In Support:

**Union Pacific Railroad Company**

by

Attorney Mack Shumate

**The City of Oak Creek**

by

Attorney Larry Haskin

**Wisconsin Electric Power Company**

by

Attorney Catherine Phillips

In Opposition: None

As Interest May Appear:

The Office of State Senator Jeff Plale appeared by Staff Member, Megan Stritchko

In addition to the parties, no members of the Public appeared or registered at the hearing either in favor of or opposed to the petition.

## FINDINGS OF FACT

The **hearing examiner recommended** that the Elm Road crossing of the Union Pacific Railroad Company tracks in the City of Oak Creek, Milwaukee County be closed to motor vehicle traffic and be altered and remain open for recreational use by pedestrians and bicyclists only.

Elm Road runs in an easterly direction from State Trunk Highway 32 to the Wisconsin Electric Power Company's generating plant on the shore of Lake Michigan. The Union Pacific Railroad Company tracks define the west limit of the electric generating plant facility. The crossing, therefore, is on the westerly edge of the generating plant. There are a number of residences along Elm Road between the Union Pacific Railroad and State Trunk Highway 32. However, there are no residences east of the tracks and virtually no purpose for residents living west of the crossing to travel to areas east of the crossing. The primary purpose and use of Elm Road at the crossing is to provide ingress and egress to the plant for generating plant employees.

Wisconsin Electric Power Company, or an affiliate, is engaged in greatly expanding the capacity of the generating plant. That expansion includes altering and improving the related infrastructure for more efficient coal delivery and handling as well as for the routing of motor vehicle traffic into and around the plant. One of those modifications is to relocate the plant employee entrance to a private road and private crossing owned by the Company and located about one-quarter mile south of Elm Road. The crossing at Elm Road will therefore become redundant and little used for motor vehicle traffic.

Milwaukee County and the City of Oak Creek maintain a Trail known as the Oak Leaf Recreation Trail. It is dedicated to pedestrian and bicycle use. The proposal of the City of Oak Creek is to extend that trail by bringing a segment over the present Elm Road Crossing. Predictions by Mr. Doug Schachtner, Parks and Recreation Director for the City of Oak Creek are that traffic on such a trail at the crossing would be very light and limited to daylight hours.

Elm Road crosses the Union Pacific Railroad tracks at an angle of approximately 90 degrees. The westerly approach is at a relatively steep incline while that from the east is relatively flat. Visibility is adequate in all four quadrants for approaching traffic on foot or bicycle. The Railroad operates about four freight trains per week in both directions over this crossing at a timetable speed of 40 miles per hour. In addition, two coal train locomotives cross this crossing to refuel in Milwaukee and return to the generating plant. However, this practice will be terminated as on-site fueling facilities are being constructed as part of the generating plant upgrades.

The design of the proposed crossing calls for a crossing surface width of 12 feet. That width is more than reasonably required for pedestrian and bicycle use and exceeds, by some four feet, the standard pre-assembled sections normally used in the construction of crossings. A crossing surface of 8 feet in width is reasonable.

It is further proposed that the recreational trail be routed through a maze on both approaches to the crossing. The proposed maze design is in evidence and filed with this Office. It is one that assures that all users of the trail would necessarily face both up and down the tracks as they negotiate the maze on their approach to the crossing. That design is found to be adequate and reasonable for the purpose with the exception of any re-design necessitated by the reduction of the crossing surface from 12 feet to 8 feet in width.

The City of Oak Creek intends to abandon a portion of Elm Road west of the crossing so that it will no longer be used for motor vehicle traffic. Use of that portion of the roadway east of the tracks by motor vehicle traffic is to be terminated as well. Therefore it is unnecessary to order vehicle turnarounds.

The Elm Road crossing is presently protected by automatic gates with flashing lights and bell, which was installed in 1952. Constant warning time circuitry was added at an unknown time. The Union Pacific Railroad argues for the retention of this equipment at the crossing in the event that the crossing is kept open for recreational use. It is not reasonable in view of the light traffic on both rail and trail and the design of the proposed maze to expend the funds necessary to remove and reinstall and maintain equipment more than 50 years of age. It would be equally unreasonable to require the parties to expend funds of approximately \$150,000.00 to install new equipment at this crossing. However, the Wisconsin Department of Transportation is expected to contract for the design of the Kenosha-Racine-Milwaukee Metra Commuter Rail Line extension in the near future. If built, this project would bring Commuter Rail trains in an unknown number over this same crossing. In that event, the crossing should be signaled. The existing signals should, therefore, be removed. However, the circuitry necessary to activate standard signals or "Walk/Don't Walk" pedestrian control lights should be kept in place for such future exigency.

Fire and emergency response access has been over the Elm Road crossing. However, the alternate crossing just south of Elm Road will provide adequate alternate access.

The parties have entered into definitive agreements for the allocation of costs between them for the completion of the proposed alterations. Those agreements have been filed with this Office and are found to be fair and reasonable and sufficient to control such allocations. This order shall, therefore, be silent as to allocation of costs unless and until any party shall petition the Office to the contrary.

In summary, the alteration as proposed of the crossing at-grade of the Union Pacific Railroad Company tracks with Elm Road is reasonable and consistent with the goals of preserving public safety and convenience.

### CONCLUSIONS ON THE ISSUES

1. That the proposed alteration of the crossing at-grade of the Union Pacific Railroad Company tracks by Elm Road in the City of Oak Creek, Milwaukee County, to that of a recreational trail will promote public safety and convenience.

2. That in order to adequately protect and promote the safety of recreational trail users, it is necessary to install and maintain a maze, of the design entered into evidence and filed with this office, on each approach to the crossing, except that such design shall be modified to provide exits onto a track crossing surface of 8 feet in width.

3. That in order to adequately protect and promote public safety, it is necessary to install and maintain stop signs and reflective crossbucks on each approach a distance of 15 feet from the centerline of the tracks and advance warning signs on each of the approaches to the crossing at a distance of 30 feet in advance of the maze.

#### CONCLUSION OF LAW

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats, extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

#### ORDER

##### THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Company** shall remove the motor vehicle crossing surface and the roadway approaches within its right-of-way for the crossing at-grade of **Elm Road** with their tracks in the City of Oak Creek, Milwaukee County and replace the same with concrete panel crossing materials for a pedestrian and bicycle trail crossing of eight feet in width before **July 1, 2006** (Crossing no. 176-736 C). Additionally, it shall remove the existing signals from the crossing, but shall keep in place that bungalow and existing circuitry for potential future use with signals or "Walk/Don't Walk" pedestrian controls.

2. That in conjunction with the replacement of the motor vehicle crossing with the pedestrian and bicycle trail crossing, the **City of Oak Creek** shall install a bicycle and pedestrian maze on both approaches to the crossing in accordance with the design proposed at hearing herein and filed with this Office, except as modified to exit onto a crossing surface of eight feet in width. The **City of Oak Creek** shall install fences to prevent trail traffic from circumventing the maze, all in accordance with the plans submitted at hearing as Exhibit 6.

3. The **City of Oak Creek** shall remove portions of the roadway surface of **Elm Road** both east and west of the crossing and shall prevent motor vehicle access to the area of the maze and trail crossing.

4. That **Union Pacific Railroad Company** shall install and maintain retro reflective back-to-back crossbucks with 2" wide reflective vertical strips on the front and back of the

support posts on each approach to the crossing of its tracks and at a distance of 15 feet from the centerline of the tracks. It may use reduced size crossbucks consistent with the Manual on Uniform Traffic Control Devices (MUTCD) provisions for railroad crossings for non-motorized traffic.

5. The **City of Oak Creek** shall install advance warning signs on both approaches to the maze and shall install and maintain stop signs controlling approaching traffic on either side of the tracks on the support posts for the crossbucks described in the paragraph next above. It may use reduced size stop signs consistent with the manual on Uniform Traffic Control Devices (MUTCD) provisions for railroad crossings for non-motorized traffic.

6. That jurisdiction is retained.

Dated at Madison, Wisconsin, May 30, 2006.

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen, Commissioner

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